IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 159 of 2005

Between:

Konda Vasudev S/o.Late Veeraiah, Jr. Inspector,
O/o The Dy.General Manager,SCCL., Mandamarri,
Adilabad Dist.

..... PETITIONER

AND

1 The Dy.General Manager (p)., Singarani Colleries Company Ltd., Mandamarri, Adilabad District.
2 The General Manager (p). Corporation, Singarani Colleries Company Ltd.,(Head Office), Kothagudem, Khammam Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not counting petitioner's date of birth from 7-1-1945 as illegal, improper unjust and against principles of natural justice.

Counsel for the Petitioner: MR.CHINDAMANJANEYULU

Counsel for the Respondents: MR.K.SRINIVASA MURTHY

The Court made the following:

ORDER:

Challenging the proceedings dated 13.01.2005 informing the petitioner that he will be retired from service w.e.f. 21.01.2005 on attaining the age of superannuation, this writ petition is filed.

The contention of the learned counsel appearing for the petitioner is that the petitioner's date of birth is 07.01.1946, but not 20.01.1945 and prays to grant appropriate orders.

On the other hand, the learned Standing Counsel for the respondent-Corporation contended that as per the records, the petitioner has to retire from service on attaining the age of supperannuation on 21.01.2005, and as such, the same was informed to the petitioner by the impugned proceedings, and therefore, there are no grounds to interfere with the impugned proceedings.

The learned counsel for the petitioner placed strong reliance on the decision of a Division of this Court reported in **M.Vijaya Bhaskara Reddy v High Court of Andhra Pradesh**, wherein certain guidelines have been given which are extracted below:

> "What emerges from the discussion of the judgments of the Apex Court noticed above, can be summarized. They are as follows:
>
> 1. It is open to a civil servant to claim correction of his date of birth as held in the Case of Harnam Singh (supra).

2. Such claim of the employee can be allowed only if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and that he produces *prima facie* evidence of unimpeachable character in support of the proof for change of date of birth as held in Harnam Singh's case (supra) and R.Kirubakaran's case (supra).

3. Even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay and if a Government servant approaches the employer at a belated stage or at the fag end of the service, the general principle of refusing relief on grounds of laches or stale claims is generally applied by the Courts and the Tribunals as could be discerned from the judgments in K.Sitadevi's case (supra), Harnam Singh (supra), Burn Standard Company Limited case (supra), Visakhapatnam Dock Labour Board (supra) and C.Rama Swamy's case (supra).

4. An employee is estopped from seeking alteration of date of birth if he has gained or derived some perceivable benefit or advantage to himself by representing an incorrect date of birth at the stage of entry into service as held in C.Rama Swamy's case (supra)."

The learned counsel for the petitioner has also placed reliance on a decision of this Court reported in **P. Pocharmma v Principal Secretary, Technical Education, Government of Andhra Pradesh and others**, wherein it is held as follows:

> "The learned Single Judge considered the arguments of the parties and dismissed the writ petition. Law is settled that once a date of birth is entered in the service register and accepted by the parties i.e., the employer and the employee, it cannot be changed unilaterally without an unimpeachable evidence to show that the date of birth so entered in the service register is incorrect. That would contemplate that if an employer wants to change the recorded date of birth of an employee, he has to conduct an enquiry. When the case came up for hearing on the last occasion, we had requested the learned Counsel for the respondents to tell us as to whether any enquiry had been conducted and if so record be produced. He produced the record, but there is nothing on record and it has been conceded by the learned Counsel for the respondents that no enquiry has been conducted, but he would

> submit that asking the writ petitioner to submit herself to the forensic examination was an enquiry in itself. We cannot accept such an argument. We have seen the service register of the writ petitioner which shows that her date of birth is 16.05.1950 which has been endorsed by the officer who has entered it in the service register. It is also accepted in the counter-affidavit that a certificate issued by the Sarpanch, Gram Panchayat, Chinna Chinthakunta Village was produced by the petitioner at the time of her appointment. Obviously this certificate has been accepted as proof of the date of birth of the petitioner. Then in 1987 the petitioner was again referred to a doctor who certified her date of birth on the basis of her appearance and her statement. For four years from 1987 to 1993 the respondents did not do anything, but in 1993 they subjected the petitioner to forensic examination. We presume that the date of birth of the petitioner was recorded in her service register on the basis of certificate issued by Sarpanch, Gram Panchayat, Chinna Chintakunta. That certificate was never challenged, no enquiry was conducted, therefore, in our view, the learned Single Judge was not right in dismissing the writ petition."

The above two decisions have no application to the case on hand since it is not a case of change of date of birth unilaterally without an unimpeachable evidence by the respondents, but based on the date of birth as available in the records, the impugned proceedings have been issued.

There is no dispute about the law laid down by the Division Bench of this Court. But, the questions as to whether the date of birth relied upon by the respondent-authorities to retire the petitioner from service or whether the date of birth relied on by the petitioner to be continued in service, is correct or not, are disputed questions of fact, which cannot be gone into by this Court in exercise of its powers under Article 226 of the Constitution of India, and the remedy of the petitioner is to approach the appropriate forum, where evidence can be adduced in respect of their respective contentions.

The writ petition is devoid of merits and is accordingly dismissed at the admission stage. No costs.

18.01.2005

Note: Furnish CC by tomorrow

(b/o)

VGB

To

1 The Dy.General Manager (P)., Singarani Colleries Company Ltd., Mandamarri, Adilabad Dist.
2 The General Manager (P). Corporation, Singarani Colleries Company Ltd.,(Head Office), Kothagudem, Khammam Dist.

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